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Licensee.

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WHEREAS, Licensee and the Board have agreed to resolve the complaint received regarding Licensee in the manner set forth in this agreed-upon disposition and waiver of hearing pursuant to SDCL § 36-1C-6.

WHEREAS, it is the intent of this agreement to provide for a resolution of the licensing issues presented by the Licensee's conduct, in a professional manner, without the necessity of further proceedings herein, and to provide a responsible resolution;

WHEREAS, Licensee hereby agrees to be mandated into the Health Professionals Assistance Program ("HPAP") with terms and conditions to be determined by HPAP;

WHEREAS, Licensee hereby agrees to a Suspension of Licensee's South Dakota license, such Suspension to be stayed so long as Licensee is not unsuccessfully discharged by HPAP. If HPAP issues Licensee an unsuccessful discharge, Licensee's license is automatically and immediately suspended and the stay is lifted. When Licensee is successfully discharged from HPAP, the stayed suspension terminates;

WHEREAS, per the Nurse Licensure Compact Regulations, Licensee understands that one mandated into such a program as HPAP is granted a single-state license only;

WHEREAS, Licensee understands that a stayed suspension is reportable discipline which will be published in the Board's newsletter, posted on its website, and reported into the National Practitioner Data Bank (NPDB) as required by law. As the stayed suspension is reportable discipline, Licensee is required to provide an affirmative response to inquiries of disciplinary action on further renewals and other nursing related inquiries;

WHEREAS, Licensee understands that participation in HPAP is mandatory in order to maintain a single-state license in South Dakota. To meet the terms of this agreement, Licensee must

be demonstrating active participation in HPAP within five (5) business days of Licensee signing this Agreed Upon Disposition; and

WHEREAS, Licensee agrees and understands that any failure to comply with any aspect of the HPAP program and its contract, even noncompliance less than an unsuccessful discharge, will be reported to the Board for further action as deemed appropriate by the Board.

NOW, THEREFORE, it is hereby stipulated and agreed as follows:

1. The Board has jurisdiction over the person of the Licensee and the subject matter of this Order.
2. The Board asserts the facts stated above. Licensee agrees to the terms of this Agreed Upon Disposition but such does not result in an admission of the facts stated herein.
3. Licensee recognizes that this matter is of a nature that could constitute grounds for discipline of Licensee's license to practice as a nurse in the State of South Dakota under SDCL § 36-9-49 and/or SDCL § 36-9-49.1.
4. Licensee understands that Licensee has a right to a contested hearing case pursuant to SDCL Ch. 1-26 regarding this matter and that such rights under SDCL Ch. 1-26 include, but are not limited to: a contested case hearing before the Board, to be present at the contested case hearing, to be represented by legal counsel, to introduce evidence and testimony on Licensee's behalf, to call witnesses, to cross-examine witnesses, to inspect all documentary evidence submitted to the Board, and to appeal the Board's decision to the South Dakota Circuit Court and Supreme Court, as provided by law.
5. By entering into this agreed-upon disposition with the Board, Licensee hereby knowingly and voluntarily waives the above rights and agrees that this matter will be resolved

according to the procedures outlined in SDCL § 36-1C-6 by an agreed upon issuance of a Mandated Participation in Health Professionals Assistance Program (HPAP) and Stayed Suspension.


6. Licensee has been given the opportunity to discuss this agreed-upon disposition with an attorney of Licensee's choice and is aware of Licensee's rights as outlined above. Licensee voluntarily waives all such rights to a hearing, notice, appearance, or other rights. Licensee is entering into this agreed-upon disposition voluntarily and without duress or compulsion.

7. If Licensee violates any provision of Licensee's HPAP participation agreement, Licensee understands that the Board will be notified and the Licensee may be subject to discipline and reporting as determined by the Board.

8. If Licensee is unsuccessfully discharged from HPAP, Licensee's license will be immediately and automatically suspended, without the necessity of further notice, hearing, or findings and conclusions, such being waived through this Agreed Upon Disposition.

NOW, THEREFORE, the foregoing Agreed Upon Disposition for Mandated Participation in HPAP, Stayed Suspension and Waiver of Hearing is respectfully submitted to the Board with the request that the Board adopt its terms as an Order of the Board in the above matter.

Dated this 1 day of January, 2022


Marvin Mitchell, Licensee

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Licensee:

**MANDATED PARTICIPATION IN
HEALTH PROFESSIONALS
ASSISTANCE PROGRAM (HPAP)
AND STAYED SUSPENSION**

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IT IS HEREBY ORDERED that the South Dakota Board of Nursing accepts, adopts, and incorporates Licensee's Agreed Upon Disposition into this Mandated Participation in Health Professionals Assistance Program (HPAP) and Stayed Suspension by reference, the same as if all such terms were set forth herein.

SOUTH DAKOTA BOARD OF NURSING

Linda Young
Linda Young, RN, MS, FRE
Executive Director